

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Dated 7 September 2006

**Public Authority:** House of Commons

**Address:** House of Commons  
London  
SW1A 0AA

#### Summary Decision and Action Required

The Information Commissioner's (the "Commissioner") decision in this matter is that the House of Commons has not dealt with the complainant's request in accordance with Part 1 of the Freedom of Information Act 2000 (the "Act") in that it has failed to comply with its obligations under section 1(1).

In order to comply with its obligations under s.1 (1) of the Act, the House of Commons (the "House") shall, within 35 calendar days of the date of this notice, communicate to the complainant the information that he requested.

#### 1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

1.1 The Commissioner has received an application for a decision whether, in any specified respect, the complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Act.

1.2 Where a complainant has made an application for a decision, unless:

- the complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

## 2. The Complaint

2.1 On 25 June 2005 the complainant requested the following information from the Public Authority.

*“How many travel warrants were drawn and used by David Blunkett MP between the end of 2002 and the end of 2004*

2.2 The House responded on 27 July 2005. The complainant has not been able to provide the Commissioner with a copy of the reply. However he has advised the Commissioner that it stated that the information was protected by the Data Protection Regulations.

2.3 The complainant requested an internal review of its decision on 29 July 2005. The House carried out an internal review on 15 September 2005 in which it maintained its view that disclosure of information additional to that in its publication scheme would not be consistent with the data protection principles. It argued that disclosure of the requested information would be unfair and therefore in breach of the data protection principles. It therefore maintains that the information is therefore exempt from disclosure under section 40 of the Act.

## 3. Relevant Statutory Obligations under the Act

### Failure to give access

**Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

### The Section 40 exemption

**Section 40(2)** of the Act states that:

*“Any information to which a request for information relates is also exempt information if-*

- (a) it constitutes personal data which do not fall within subsection (1), and*
- (b) either the first or second condition below is satisfied.”*

Section 40 (3) states:

*“The first condition is:*

*(a) in a case where the information falls within any of the paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise under this Act would contravene-*

*(i) any of the data protection principles, or section 10 of that Act (right to prevent processing likely to cause damage or distress).....”*

#### **4. Review of the case**

- 4.1 On 29 September 2005 the complainant formally asked the Commissioner for a decision about the House’s decision to refuse the request for information that he made to it.
- 4.2 On the 5 April 2006 the Commissioner wrote to the complainant advising that he was dealing with a number of similar requests and that he would be writing to the House asking if it wished to make any further comments in addition to those it had provided in its internal review notice.
- 4.3 The Commissioner wrote to the House on 5 April 2006 asking it if it wished to confine its reasons for withholding the information requested to those stated in its internal review notice and seeking a copy of the complainant’s original request for the information.
- 4.4 The House responded on 11 April 2006 providing a copy of the request but asking for an extension of time in which to respond to the remainder of the Commissioner’s letter of 5 April 2006.
- 4.5 On 4 May 2006 the House responded to the Commissioner indicating that the Commissioner seemed to cast doubt on whether the information requested was personal data relating to a third party. However, it added that if the Commissioner accepted that the information was personal data relating to a third party, then it was content to rely on the arguments it made in support of the use of the s.40 exemption in its internal review notice.
- 4.6 The Commissioner responded on the 5 May 2006 confirming he accepted the information was personal data and that he would take into account the views expressed by the House in its internal review notice.
- 4.7 **Personal Data**

The Commissioner accepts that the information requested is personal data as defined in the DPA. The DPA defines personal data as:

*"...data which relate to a living individual who can be identified-*

*a) from those data, or*

*b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller..."*

#### 4.8 **The first data protection principle**

The first data protection principle requires that:

*"Personal data shall be processed fairly and lawfully, and, in particular, shall not be processed unless-*

*(a) at least one of the conditions in Schedule 2 is met, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met"*

- 4.9 The House argued that disclosure of information in addition to that which is already included in its publication scheme would be unfair to individual MPs. In a letter of December 2002, MPs had been advised of the information which would be disclosed in the House's publication scheme. The House asserted that since no further notice of additional disclosure has been given, MPs could reasonably expect that nothing further would be disclosed and that disclosure of the requested information would therefore be unfair.
- 4.10 In the Commissioner's view disclosure of the information sought would not be unfair. The Commissioner accepts that disclosure of the information requested goes beyond that which MPs were notified of in the letter of December 2002. However, the Commissioner also notes that the letter of December 2002 does not, and could not, give any assurances to MPs that additional information will not be provided should the Act require its disclosure.
- 4.11 The Commissioner is of the view that the information requested relates to individuals acting in an official as opposed to a private capacity. The journeys that an MP may use travel warrants for are ones made in connection with his or her official business, for example travel to the House of Commons from his or her constituency. Purely private travel, for example that carried out for recreational purposes, is not subject to reimbursement. Information about such journeys does not, therefore, fall within the terms of the complainant's request.
- 4.12 The Commissioner accepts that the information sought is personal data. However, disclosure of the requested information would not erode the personal privacy that individual MPs are entitled to in their private lives. The Commissioner considers that the information sought in this case is personal data about the number of travel

warrants drawn and used by the MP in order to carry out his Parliamentary business, journeys for which he receives an official allowance paid for from the public purse. Therefore, it is the Commissioner's view that disclosure of the information in this case would not be unfair.

#### 4.13 **Schedule 2, Condition 6**

The first data protection principle requires that personal data shall be processed fairly and lawfully and in particular shall not be processed unless at least one of the conditions in Schedule 2 of the DPA is met. In this case the House asserted that the only relevant condition which might be met in Schedule 2 is condition 6. Condition 6 legitimises the processing of personal data in cases where:

*The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.*

- 4.14 The House recognises that information pertaining to the use of public money by elected office-holders is a matter of legitimate public interest. However, the House asserts that disclosure in this case would be prejudicial to the legitimate interests of the data subject (the MP). This is because the requested disclosure would go beyond that notified to MPs in December 2002 (and which now forms part of the House's publication scheme); this was a level of disclosure which, at the time, was thought to represent the appropriate balance between the interests of the public and the interests of MP's.
- 4.15 The Commissioner has also taken into account further arguments raised by the House in other cases regarding Schedule 2, Condition 6. These cases also involve requests for the disclosure of MP expenses and the Commissioner considers the House's arguments in those cases should also be addressed in the context of this complaint. In these cases the House also argues that, in the context of condition 6 of Schedule 2 of the DPA, MPs should not be required to produce evidence of specific prejudice arising from disclosure in order to provide a counterbalance to the legitimate interest of the requestor. The House suggests that it would be unfair to require MPs to present evidence of a specific prejudice, arguing that the requestor needs only to establish that his legitimate interest is a general one in the spending of public funds and not anything specific to him.
- 4.16 Further, the Commissioner notes that the House has asserted that since the request was made under the Act and the House is not entitled to ask why the complainant is seeking the information, it does not believe that the legitimate interests the complainant has in disclosure, and the possible prejudice to an MP, can be properly balanced unless the House knows why the complainant wants the information and what she intends to do with it. In addition, the House argues that it

does not accept that the balance falls in favour of the complainant unless specific prejudice can be identified.

- 4.17 The Act does not allow a request for information to be refused on the grounds that the public authority is unaware of the purposes for which information is being sought and of how it might be used. Any assessment of whether disclosure of the information will cause prejudice must be based on a consideration of the nature of the information and whether its disclosure would cause unwarranted prejudice to the legitimate interests of the MP.
- 4.18 In any event, the House has not produced evidence of any prejudice to the legitimate interests of the MP.
- 4.19 As the House has acknowledged, the public (and the complainant as a member of the public) has a legitimate interest in access to information about an elected official's claims for public money. The House has not demonstrated that disclosure of the requested information would cause unwarranted prejudice to the legitimate interests of the MP. Therefore, the Commissioner's view is that, in this case, condition 6 of Schedule 2 of the DPA is met. Therefore this requirement of the first data protection principle does not prevent the disclosure of the requested information.

## **5. The Commissioner's decision**

The Commissioner's decision is that the House is in breach of section 1(1) of the Act in that it incorrectly withheld the information requested on the basis that it is exempt under s.40 (2) of the Act.

## **6. Action Required**

In order to comply with its obligations under s.1 (1) of the Act, the House shall, within 35 calendar days of the date of this notice, communicate to the complainant the information that he requested.

**7. Right of Appeal**

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

**Dated the 7<sup>th</sup> day of September 2006**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**